

MALAMUT AND ASSOCIATES, LLC

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Attorneys for Defendants,

*Mildred Scholtz, Captains Matthew Leith, W. McDonnell and J. Larkins, T Blango, P Blango,
Burlington County Board of Chosen Freeholders, Mary Ann O'Brien, Bruce Gargano, Aimee
Belgard, Joseph Donnelly and Joanne Schwartz*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DARIUS GITTENS,

Plaintiff,

vs.

MILDRED SCHOLTZ, individually and
Officially as Warden of Burlington County,
New Jersey Adult Detention Facility;
CAPTAINS MATTHEW LEITH, W.
MCDONNELL and J. LARKINS, each
individually and officially in Burlington
County, New Jersey Adult Detention Facility;
T. BLANGO and P. BLANGO, exact twin
brothers, Lieutenants, each individually and
officially in Burlington County New Jersey
Adult Detention Facility; BURLINGTON
COUNTY, NEW JERSEY BOARD OF
CHOSEN FREEHOLDERS, each
individually and officially; MARY ANN
O'BRIEN, BRUCE GARGANIO, AIMEE
BELGARD, JOSEPH DONNELLY,
JOANNE SCHWARTZ; and the NEW
JERSEY DEPARTMENT OF
CORRECTIONS, GARY LANIGAN,
COMMISSIONER; MARCHUS HICKS,
DIRECTOR OF OFFICE OF COUNTY
SERVICES; DARCELLA SESSOMES,
ASSISTANT COMMISSIONER, DIVISION
OF PROGRAMS AND COMMUNITY
SERVICES; CORRECTION OFFICER T.
CASE AND UNKNOWN EMPLOYEE;
officially and individually;

Defendants.

CIVIL ACTION NO.:
1:18-cv-02519 (RBK-KMW)

**ANSWER TO COMPLAINT,
DESIGNATION OF TRIAL COUNSEL
and JURY DEMAND**

Mildred Scholtz, Captains Matthew Leith, W. McDonnell and J. Larkins, T Blango, P Blango, Burlington County Board of Chosen Freeholders, Mary Ann O'Brien, Bruce Garganio, Aimee Belgard, Joseph Donnelly and Joanne Schwartz (hereinafter "Defendants") say by way of Answer to the Plaintiff's Complaint as follows:

JURISDICTION AND VENUE

1. The allegations contained within this paragraph call for a legal conclusion and therefore no response is required. To the extent there is a factual allegation it is denied.

PARTIES

2. Defendants neither admit nor deny the allegations of this averment and leave Plaintiff to his proofs.

3. It is admitted that at all times relevant to this matter, Mildred Scholtz was employed as Warden of the Burlington County Correctional Facility.

4. It is admitted that at all times relevant to this matter, Matthew Leith, W. McDonnell and J. Larkins were employed by the Burlington County Correctional Facility and held various titles/ranks.

5. It is admitted that at all times relevant to this matter, T. Blango and P. Blango were employed by the Burlington County Correctional Facility and held various titles/ranks.

6. It is admitted that at all times relevant to this matter, Mary Ann O'Brien, Bruce Gargano, Aimee Belgard, Joseph Donnelly and Joanne Schwartz served as Freeholders for the County of Burlington. It is denied that these individuals were responsible for the upkeep and conditions of confinement and the welfare of all detainees held at the Burlington County Adult Detention Center.

7. Defendants neither admit nor deny the allegations of this averment and leave Plaintiff to his proofs.

8. Defendants neither admit nor deny the allegations of this averment and leave Plaintiff to his proofs.

9. Defendants neither admit nor deny the allegations of this averment and leave Plaintiff to his proof.

10. Defendants neither admit nor deny the allegations of this averment and leave Plaintiff to his proof.

11. Defendants neither admit nor deny the allegations of this averment and leave Plaintiff to his proof.

12. The contents of this averment are legal conclusions and as such no response is required. To the extent any portion of this averment contains a factual allegation, they are denied.

PROLOGUE

13. The contents of this averment are legal conclusions and as such no response is required. To the extent any portion of these averments contains a factual allegation, they are denied.

14. The contents of this averment are legal conclusions and as such no response is required. To the extent any portion of these averments contains a factual allegation, they are denied.

15. The contents of this averment are legal conclusions and as such no response is required. To the extent any portion of these averments contains a factual allegation, they are denied.

16. The contents of this averment are legal conclusions and as such no response is required. To the extent any portion of these averments contains a factual allegation, they are denied.

17. The contents of this averment are legal conclusions and as such no response is required. To the extent any portion of these averments contains a factual allegation, they are denied.

18. The contents of this averment are legal conclusions and as such no response is required. To the extent any portion of these averments contains a factual allegation, they are denied.

19. The contents of this averment are legal conclusions and as such no response is required. To the extent any portion of these averments contains a factual allegation, they are denied.

20. The contents of this averment are legal conclusions and as such no response is required. To the extent any portion of these averments contains a factual allegation, they are denied.

21. The contents of this averment are legal conclusions and as such no response is required. To the extent any portion of these averments contains a factual allegation, they are denied.

FACTS

22. No response to this averment is required.

23. Admitted.

24. The allegations in this averment are neither admitted nor denied. Plaintiff is left to his proofs.

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71. Denied.

72. Denied.

73. Denied.

74. The allegations in this averment are neither admitted nor denied. Plaintiff is left to his proofs.

75. Admitted.

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79. Admitted.

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153. The allegations of this averment are not directed to any of the answering Defendants and, as such, no response is required.

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172. The allegations in this averment are neither admitted nor denied. Plaintiff is left to his proofs.

CLAIMS FOR RELIEF

The Plaintiff has raised various claims for relief as outlined in Claims A through Q, inclusive. After the filing of the Complaint, the Honorable Robert B. Kugler, U.S.D.J. screened the Complaint and on July 23, 2019 entered an Order dismissing various claims for relief either partially and/or in their entirety. To the extent that any of Plaintiff's Claims for Relief survived Judge Kugler's screening and were not dismissed either totally or partially and apply to the answering Defendants, these Claims for relief are specifically **DENIED**.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Defendants did not breach any duty which may have been owed to the plaintiff and its action.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. seq. and therefore liability cannot be imposed upon the defendant a public entity by operation of the law.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims fail to meet the standard required for punitive damage claims and plaintiffs' claims are barred by the applicable punitive damage statutes and/or case law.

FIFTH AFFIRMATIVE DEFENSE

Defendants' actions were in good faith and therefore defendants are entitled to qualified immunity by virtue of Title 59 and the procedural requirements of the Act.

SIXTH AFFIRMATIVE DEFENSE

All claims of plaintiff are barred by the Prison Litigation Reform Act.

SEVENTH SEPARATE DEFENSE

Plaintiff's claims are barred by the applicable Statute of Limitations.

EIGHTH SEPARATE DEFENSE

This court lacks subject matter jurisdiction over this matter.

NINTH SEPARATE DEFENSE

Answering defendants are protected by an absolute immunity.

TENTH SEPARATE DEFENSE

Answering defendants are protected by a qualified immunity.

ELEVENTH SEPARATE DEFENSE

Plaintiff failed to utilize existing administrative means available to convey his alleged complaints.

TWELFTH SEPARATE DEFENSE

Answering Defendants are entitled to all the privileges and limitations contained in N.J.S.A. 59:9-2, et seq.

THIRTEENTH SEPARATE DEFENSE

Assuming arguendo that the acts or omissions alleged constitute negligence, negligence is not a cause of action under 42 U.S.C. § 1983.

FOURTEENTH SEPARATE DEFENSE

In applying the “objectively reasonable” test or the “clearly established law” test, qualified immunity applies to the individual defendants.

FIFTEENTH SEPARATE DEFENSE

Plaintiff has failed to prove malicious intent on the part of the individual defendants sufficient to defeat a claim of qualified immunity.

SIXTEENTH SEPARATE DEFENSE

Plaintiff's Complaint is frivolous within the meaning of Fed. R. Civ. P. 11 and defendants hereby reserve their rights in that regard.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants are immune from liability pursuant to the provision of N.J.S.A. 59:9-2(d).

EIGHTEENTH AFFIRMATIVE DEFENSE

This action is also barred by virtue of N.J.S.A. 59:2-3 and 3-2 as to the absence of liability from the exercise of judgment or discretion.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's civil rights were not violated by defendants.

TWENTIETH AFFIRMATIVE DEFENSE

At all times pertinent to the allegations contained within the plaintiff's complaint defendants acted within the boundaries of their lawful authority.

TWENTY-FIRST AFFIRMATIVE DEFENSES

Defendants acting in their official capacity are immune from punitive damages under the Civil Rights Act, 42 U.S.C. Section 1983 and New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et. seq.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's cause of action is not cognizable under the Civil Rights Act, 42 U.S. Section 1983, and 1985 and/or New Jersey Constitution.

TWENTY-THIRD AFFIRMATIVE DEFENSE

The doctrine of respondeat superior is not applicable to Civil Actions brought under 42 U.S. Section 1983.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Negligent supervision and failure to train alone are not basis for § 1983 liability.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Defendant Burlington County, New Jersey Board of Chosen Freeholders is not a proper legal entity.

TWENTY-SIXTH SEPARATE DEFENSE

Assuming arguendo that the acts or omissions alleged constitute negligence, negligence is not a cause of action under 42 U.S.C. § 1983.

TWENTY-SEVENTH SEPARATE DEFENSE

Plaintiff lacks standing to pursue the instant Complaint.

TWENTY-EIGHT SEPARATE DEFENSE

Plaintiff has failed to exhaust their administrative remedies and/or otherwise comply with the Prison Litigation Reform Act, 42 U.S.C. § 1997(e).

TWENTY-NINTH SEPARATE DEFENSE

The damages recoverable in this action, if recoverable at all, are limited by the provisions of the Prison Litigation Reform Act, 42 U.S.C. § 1997(e).

THIRTIETH SEPARATE DEFENSE

These answering defendants met their legal duty with regard to the plaintiff and their actions in this matter do not constitute a constitutional violation.

DEMAND FOR TRIAL BY JURY

PLEASE TAKE NOTICE: Answering Defendants hereby demand a trial by jury as to all issues herein.

COUNTERCLAIM FOR COUNSEL FEES

173. The allegations in Plaintiff's Complaint are frivolous with regard to Answering Defendants.

174. Answering Defendants herein demand attorney fees pursuant to 42 U.S.C. § 1988.

WHEREFORE Defendants demand judgment against Plaintiff for an award of reasonable attorney's fees and costs of suit.

LOCAL CIVIL RULE 11.2 CERTIFICATION

To the best of counsel's knowledge, counsel hereby certifies that the within matter in controversy is not the subject of any other action pending in any court or of a pending arbitration or administrative proceeding and there is no other party who should be joined in this action.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the Rules of Court, Daniel Gee, Esq., is hereby designated as trial counsel for the Answering Defendants.

Dated July 16, 2020

By: /s/ Daniel Gee
Daniel Gee

MALAMUT & ASSOCIATES, LLC
Attorneys for Defendants,
Mildred Scholtz, Captains Matthew
Leith, W. McDonnell and J. Larkins,
T Blango, P Blango, Burlington
County Board of Chosen
Freeholders, Mary Ann O'Brien,
Bruce Gargano, Aimee Belgard,
Joseph Donnelly and Joanne
Schwartz